

BEFORE THE KANSAS COMMISSION ON PEACE OFFICERS' STANDARDS AND TRAINING

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In the Matter of)
)
Zachary Richardson)
 Cert. # 25054)
 Respondent)

Case No. 2014-0201

ORDER

On October 11, 2016, the above-referenced matter comes for hearing before the Kansas Commission on Peace Officers' Standards and Training (Commission). Pursuant to K.S.A. 2016 Supp. 77-514(g), the Commission has delegated its authority as Presiding Officer to the Hearing Panel, which is comprised of Commissioners Richard Powell, Chief Deputy of Sedgwick County Sheriff's Office; Herman Jones, Sheriff of Shawnee County Sheriff's Office; and Bradley Schoen, Director of Riley County Police Department. Zachary Richardson appeared in person and by counsel, Donald Aubry. Present at the hearing were Eric N. Williams, Special Assistant Attorney General, who serves as Litigation Counsel for the Commission, and Janet L. Arndt, Assistant Attorney General, who serves as General Counsel to the Commission.

Based upon its records, the evidence, and arguments presented at the hearing, the Commission makes the following findings of fact and conclusions of law.

Findings of Fact

1. On July 7, 2008, the Wichita Police Department employed Zachary Richardson (Richardson) as a patrol officer.

2. On January 23, 2009, the Commission issued a law enforcement certification to Richardson.

3. On April 13, 2016, the Commission's Investigative Committee issued a Summary Proceeding Order concluding Richardson violated one provision in the Kansas Law Enforcement Training Act (the Act) and revoking his certification as a law enforcement officer. That order was later vacated and an Amended Summary Proceeding Order was served on Richardson on July 18, 2016. The Amended Summary Proceeding Order concluded that Richardson violated the following three provisions of the Act:

- (A) K.S.A. 2015 Supp. 74-5616(b)(1)—failing to maintain good moral character required for certification under K.S.A. 2015 Supp. 75-5605(b)(5);
- (B) K.S.A. 2015 Supp. 74-5616(b)(5) and K.A.R. 106-2-2a(a)(50)—engaging in conduct, which if charged as a crime, constitutes the misdemeanor crime of disorderly conduct; and
- (C) K.S.A. 2015 Supp. 74-5616(b)(7) and K.A.R. 105-2-3(j)(1)—engaging in unprofessional conduct by intentionally using a false or deceptive statement in an official document or communication.

Based upon the above violations, the Investigative Committee revoked Richardson's certification as a law enforcement officer. Richardson requested a hearing on the amended order pursuant to K.S.A. 2016 Supp. 77-537(b)(2). On October 11, 2016, the Hearing Panel commenced the hearing at which time the parties presented testimony and exhibits concerning an incident that occurred in Wichita, Kansas.

4. On May 17, 2014, Richardson, Brittany Aldridge (Brittany) who was Richardson's girlfriend, and their families were at a restaurant celebrating Brittany's college graduation. Between 6:00 to 8:00 p.m., Richardson drank two 25-ounce margaritas, shared one margarita with Brittany, and had a shot of vodka and pineapple juice. Afterwards, Richardson and Brittany went home where he slept from about 8:15 p.m. to 9:30 p.m. They then decided to go to a bar.

5. At approximately 10:15 p.m., Richardson and Brittany arrived at Ernie Biggs Piano Bar. They were joined by one of Brittany's relatives. James Rowley (Rowley) was working as security at the bar. When Richardson entered the bar, Rowley asked him for identification. Richardson showed his WPD police badge to Rowley and responded, "Is this good enough?" Rowley told Richardson that he needed to provide a state-issued identification card. Richardson did not comply and walked past Rowley. When Rowley stopped him, Richardson said, "I'm a cop." Rather than continue the conversation, Rowley decided to let Richardson enter. Rowley assumed Richardson was joining a group of other officers sitting at a table on the main floor.

6. Richardson, Brittany, and her relative were not with the group of other officers and sat at a table near the piano on the main floor. At about 11:15 p.m., they were joined by Richardson's friend, Ryland Marks (Marks). Marks noticed that Brittany's relative was drunk. Richardson drank two Red Bulls with vodka and a shot of vodka. Richardson became bored sitting near the piano. After about thirty minutes, Richardson and Marks went upstairs where there was a dance floor and a bar. Marks was dancing and trying to get the phone number of a female who was on the dance floor. Her friend was trying to engage Richardson in conversation. Marks did not see Richardson dancing.

7. While upstairs, Richardson drank part of a Red Bull with vodka and a Jäger Bomb drink. After Richardson and Marks had been gone for about 30 minutes, Brittany and her relative went upstairs. A verbal altercation ensued between Richardson and Brittany. Brittany accused Richardson of dancing with other females and wanted him to come

downstairs to celebrate her graduation. Brittany's relative was calling Richardson racial slurs and saying Brittany's family did not like him. Brittany and her relative went back downstairs. Marks later went downstairs to check on them and then returned upstairs.

8. Rowley was informed that there was a disturbance upstairs. He went upstairs and saw Richardson dancing with a female. As she moved away, Richardson grabbed her blouse and pulled it out. Rowley also saw Richardson dancing with other females; he would dance around and run into them. Rowley went to Richardson and told him that he needed to leave.

9. Richardson refused to leave because he was a cop. When Rowley told Richardson that he was going to call the police, Richardson stared at Rowley and repeatedly said "I'm a police officer, I'm the law here," and "I own this town" as he waived his WPD badge in Rowley's face. Rowley told Richardson not to flash his badge. As Rowley grabbed Richardson to take him downstairs, Marks said he would take care of it. Marks explained they were cops. Rowley told him it didn't matter and Richardson had to leave. Rowley went downstairs to call 911.

10. Brittany went upstairs again and argued with Richardson. She was upset; Brittany and Richardson were both intoxicated. Rowley could hear them arguing and returned upstairs. Brittany's relative was also yelling at Richardson. Brittany went to the bar, got a glass of water, and threw it in Richardson's face. Richardson then pushed her, causing Brittany to fall against her relative. Brittany and her relative were escorted outside.

11. Rowley returned upstairs and told Richardson to leave. He refused. Marks saw Rowley on the phone and told Richardson they needed to go. Richardson refused, sat on the floor, and yelled profanities. Marks grabbed Richardson and they paid their bar tab. According to Marks, the bartender saw Richardson's badge and commented on it when Richardson put his credit card back in his wallet. However, Marks also testified later that a flap covers Richardson's badge when he puts his cards in the wallet.

12. Marks also claimed he and Richardson were about to leave when Rowley kept saying he was a railroad marshal and he would drag Richardson out of there. Richardson asked why he was being kicked out and Rowley's response was they had to go or he would drag them out of the bar. Marks had his arm around Richardson and was carrying him downstairs. Marks never heard Richardson telling Rowley he was an officer and owned the place. Marks acknowledged when he got in the car, he became sick from drinking alcohol but claimed his recollection of what happened was clear.

13. However, Marks was also interviewed by a WPD detective. The detective asked him whether Richardson showed his WPD badge and said "I own this town." Marks responded he did not know if Richardson said that. Marks explained he had engaged in heavy drinking and things got blurry. Both he and Richardson were drunk. He also told the detective what was being said about Richardson's behavior was not consistent with what he knew about Richardson.

14. Rowley was talking with the 911 dispatcher while Richardson and Marks were still in the upstairs bar. On the 911 tape, Rowley requested assistance to take an off-duty officer out of the bar before he dragged him down the stairs. He told the dispatcher the officer had been grabbing females, another female threw a drink in the officer's face and left, and the officer was fighting with that female's relative and grabbing at another girl who wore a skirt. Rowley told the dispatcher that the officer was saying he ran the bar and acting like he could do whatever he wanted in the bar. As Richardson left the bar, Rowley followed him to give a vehicle description and tag number to the dispatcher. Rowley was not able to keep up with Richardson's vehicle so he stopped and went back to the bar. The police later found Richardson at a convenience store.

15. There was confusion about the identity of the officer involved. A waitress had served the group of officers on the main floor and talked to one of them. That officer had also been upstairs dancing. His name, Bruce Mackey, was taken from a bar receipt and provided to Rowley, who in turn gave it to the 911 dispatcher. Mackey had been a WPD officer for approximately 20 years; he was in his mid-40s, a white male approximately 6 feet 3 inches tall, and 250 pounds. Mackey's nickname is "Flex" because he is very muscular. Richardson was in his 20s, a light-skinned black male and was shorter and weighed less than Mackey. The identity of the officer was resolved when the police officers took Rowley to the convenience store and he identified Richardson as the officer who was involved in the disturbance at the bar.

16. After identifying Richardson, Rowley returned to the bar and was interviewed by WPD Officer Brian Pham. Rowley told Officer Pham the first incident with the officer occurred as soon as "they" came to the bar. When asked for their identification, "[T]hey flashed their badge and said, 'Is this ID enough?' And we told them, 'No. We want a state ID.'" Rowley said the next encounter occurred when a conflict occurred upstairs. Rowley told Officer Pham that he was standing by the outside patio door and saw Richardson on the dance floor with a female. He described Richardson doing "the grab game" where he used his finger to pop out a female's blouse and tried to look at her breasts and "the stumble game" where he stumbled around and would grab a female. Rowley also said Richardson was grinding.

17. In his interview with Officer Pham, Rowley said Brittany came upstairs, saw Richardson dancing with the other female, and threw a drink in Richardson's face. The bar employees walked Brittany out of the bar. When Rowley returned upstairs, Richardson was cussing at Brittany's relative and saying Brittany and her family were worthless. The bar employees moved Richardson aside and the upstairs bartender said he would close Richardson's bar tab while Brittany's relative was taken downstairs. When Rowley returned, the bartender told him Richardson was signing his tab. Rowley went downstairs and had Brittany's relative leave before Richardson came downstairs. Rowley told Officer Pham when he went back upstairs again, Richardson was dancing again.

18. Rowley also described to Officer Pham his initial attempt to get Richardson to leave. He saw Richardson dancing with the females. After seeing Richardson stumble and grab a female, Rowley went to Richardson and told him he was over-served and needed to

leave. Richardson pulled out his badge and stated, "I ain't got to leave. This is who I am." Rowley told him to put his badge away or he would take it and call someone to pick it up. Rowley again told Richardson to put away his badge because no one wanted to see it. Richardson kept saying, "I'm a police officer. I own this town. I own this bar. Fuck you all. Fuck this bar. Fuck all these bitches." Marks then walked up and told Rowley they were cops. Rowley told Marks that he did not care who he was but he needed to get Richardson out of the bar. Rowley described Richardson's wallet to Officer Pham as a black tri-fold and the badge was in the middle; it was a small badge.

19. Rowley told Officer Pham that Marks grabbed Richardson and tried to drag him. Richardson was on the floor and started to get up, shoving Marks. Rowley and his staff approached Richardson again. Rowley told Richardson if he did not walk down the stairs, they would drag him down. Richardson responded, "You can't touch me. I'm an off-duty officer." Rowley told Richardson he would call the police and "give them the courtesy to come get you out of here before you end up getting drug out of here." While he was downstairs talking to the 911 dispatcher, Rowley heard a disturbance upstairs. When Rowley went upstairs, Marks saw him and told Richardson that Rowley was on the phone and they needed to go. Richardson and Marks then left the bar.

20. While in custody after the incident, Richardson was interviewed by WPD Lieutenant Randall Reynolds as a part of the criminal investigation. Richardson showed some signs of intoxication but was coherent. After waiving his Miranda rights, Richardson said Brittany was mad at him for being upstairs and wanted him to come downstairs. Brittany believed he was entertaining the females and Marks instead of entertaining her. Richardson claimed he stood by the bar, near the dance floor, or on the dance floor, but denied dancing with the other females. Richardson said he was "pissed off" when Brittany threw the water in his face. When asked what he did after having water thrown in his face, Richardson replied he could not remember if he touched her because he blacked out. Richardson said he also could not tell if he was asked to leave the bar at that time. However, Richardson did not believe he was too intoxicated to drive.

21. Lieutenant Reynolds asked Richardson if he was making any physical contact, such as dirty dancing, with other women when he was on the dance floor. Richardson said he "would not describe it as dirty dancing;" he was standing on or near the dance floor. When asked again about dancing with the women, Richardson asked if it was a crime and said it was not relevant whether he was dancing. When asked about pulling down a female's top, Richardson said he could not tell him, but to his memory, he did not. Richardson agreed that Brittany was upset when she came upstairs but denied it was because he was dancing with other females. When asked if he had physical contact with Brittany, Richardson said he did not. When asked if it was possible employees saw Richardson push Brittany and she stumbled into her relative, Richardson stated, "I guess after she threw a drink in my face." When Lieutenant Reynolds informed Richardson he was asking about what happened before the drink incident, Richardson said he did not want to answer.

22. Lieutenant Reynolds again asked Richardson if he remembered being asked to leave. Richardson initially stated he remembered the conversation but when asked what

he remembered, Richardson said he did not want to answer the question. Lieutenant Reynolds asked Richardson if he told Rowley that he was a police officer and owned the town and that Rowley could not tell him to leave. Richardson responded it did not happen and he had left on a previous occasion when he had been told to leave. When asked to clarify whether he did not say that or he could not remember, Richardson said he did not want to answer the question.

23. Lieutenant Reynolds asked Richardson about showing his badge to Rowley at the door and saying, "Is this good enough?" Richardson said it was a lie because his badge was covered. Richardson claimed he did not show his badge because he did not want people to know he is a police officer. Richardson refused to answer questions about shoving Brittany. When asked how he was dancing, Richardson said it was irrelevant and refused to answer. Lieutenant Reynolds then made it clear to Richardson that whether a question was relevant was his determination, not Richardson's.

24. The next day, WPD Detective McVay interviewed Rowley. Rowley explained again that Richardson and Marks were upstairs dancing by jumping in and out. Richardson was also pulling out one female's blouse with his finger. Brittany came upstairs and saw Richardson with a female. Brittany said, "Well, let me get this guy a water." While they near the bar, Brittany got a glass of water and threw it in Richardson's face. Richardson and Brittany were arguing and he pushed her; Brittany stumbled backwards. Rowley was not able to see if Richardson used one or both hands to push Brittany because Rowley had just walked up the stairs. Afterwards, Brittany and Richardson walked towards each other yelling profanities at one other. Richardson pushed Brittany again and she fell backwards into her relative who fell onto the back of a booth. When Detective McVay asked Rowley if he had a railroad marshal badge, Rowley explained when Richardson was putting his badge in Rowley's face, Rowley told Richardson and Marks it was illegal to flash a badge; it meant an officer was on duty when presenting his badge and Richardson was on duty drunk. Rowley also told Richardson and Marks he used to work for a railroad on train derailments and they had to show their badges when coming on duty at a train derailment.

25. About month later, Lieutenant Kenny interviewed Rowley by telephone about what happened upstairs. Rowley explained that he was in charge of security at the bar and roamed the bar. He went upstairs and saw Richardson dancing with a couple groups of females. Brittany came upstairs and saw Richardson; an argument ensued. Rowley was going to standby, but Richardson said, "Oh, it's nothing." Brittany replied, "No, this guy needs a drink." She got a glass of water and threw it in Richardson's face and told him she saw what he was doing. Richardson shoved Brittany. Rowley and bar staff approached them and Brittany said she wanted to leave. Bar employees walked Brittany out of the bar and her relative joined them. The relative returned to the upstairs bar with the bar staff. Richardson started yelling profanities at Brittany's relative and then shoved her into the booth. Rowley told Richardson he was done. Richardson showed his badge and said, "No, get off me, I'm the cops, I'm Wichita PD." Rowley told Richardson he did not care who he was and he had to get out of the bar. Richardson and Marks agreed to leave after paying their bar tab. Marks told Rowley he would watch Richardson. Rowley gave them a couple of minutes to pay their bar tabs and leave.

26. Rowley told Lieutenant Kenny, instead of leaving, Richardson went onto the dance floor and danced with a female doing the stumble game. When Rowley went to get him, Richardson pulled out his wallet and said, "I'm the PD, you can't touch me." Richardson tried to hit Rowley in the face with his wallet. Rowley told him he would take the badge if he stuck it in his face again and call someone to come get it. It appeared Richardson wanted to fight, so Rowley grabbed him and put him on the ground. Marks came running over. Rowley jumped up and grabbed Marks, telling him to stay out of it. Marks told Rowley that he was taking his friend out of the bar and they were officers. As Marks tried to drag Richardson out, Richardson hit Rowley with his badge. Rowley told him it meant you were on duty when you flashed your badge. Rowley again told him to leave. Richardson responded he couldn't kick him out. Richardson and Marks knew Rowley had called 911 and left.

27. Lieutenant Kenny also asked Rowley about Mackey. Rowley said Mackey sat downstairs at a table with a large group and acted responsibly. Rowley never saw Mackey and Richardson together or Mackey upstairs. However, Mackey had gone upstairs and the downstairs server had to go upstairs to close his tab. Rowley told Lieutenant Kenny there were three groups upstairs—one was a black family celebrating a graduation, another was several Asian individuals, and the third was Richardson, Brittany, her relative, and Marks who was a darker black male than Richardson.

28. Richardson was charged with driving under the influence and disorderly conduct in a criminal case. On March 30, 2015, he signed a diversion agreement. In that agreement, Richardson stipulated to the following factual basis for the disorderly conduct charge.

[O]n May 17, 2014, Zachary Richardson was at Ernie Biggs Piano Bar in Wichita Kansas. James E. Rowley, an employee of Ernie Biggs, observed Mr. Richardson acting inappropriately. Mr. Rowley contacted Mr. Richardson and told him he needed to leave the business. Mr. Richardson reused [sic] to leave and pulled out his Wichita Police Department badge and told Mr. Rowley "I'm Wichita PD. Fuck you all, I own this town. You can't tell me what to do, I own this city." Mr. Richardson continued to flash his badge and question Mr. Rowley and another employee about the reason for kicking him out.

The agreement also stated, "The defendant stipulates and agrees that the allegations of the Complaint/Information are true and factually correct. Defendant admits he/she is guilty of the charges alleged in this case."

29. On May 14, 2015, Richardson was interviewed by WPD Detective Dan Hardy with the Professional Standards Unit. Richardson acknowledged drinking two 24-ounce margaritas, part of a third margarita, and a pineapple drink with a vodka shot at the restaurant that evening as well as the two Red Bull drinks with vodka, a shot, and two Jäger Bombs in large shot glasses at the bar later.

30. Richardson told Detective Hardy, when they entered the bar, he was carrying Brittany's identification and money in his wallet; he opened his wallet and gave Brittany her identification and the bouncer a \$20 bill. He did not display his badge while doing so. Richardson has a tri-fold wallet; when one side is opened, cards are displayed on the inside of each side of the wallet. When the other side is opened, his WPD badge is in the middle, his cards are on one side, and his driver's license is underneath a flap on the other side.

31. During the interview with Detective Hardy, Richardson said he blacked out and could not remember everything that happened at the bar. Richardson said he was standing by the bar when Brittany and her relative came upstairs; Brittany was upset because he was not downstairs entertaining her. She asked if he was ready to leave and he said no. Brittany told Richardson he needed to drink water before they left; Brittany got a glass of water for Richardson, which he refused and continued to drink. A glass of water was then thrown in his face, but he did not see who threw it; he assumed it was Brittany. Richardson said he laughed it off. Richardson stood there while bar employees escorted Brittany from the bar. Brittany's relative used profanities towards him, including calling him a "nigger." Richardson said he laughed it off and did not think much of it. Brittany's relative then left the bar.

32. Richardson told Detective Hardy he did not recall having any physical contact with Brittany or what he told Lieutenant Reynolds about having physical contact with Brittany. Richardson also did not recall dancing with anyone at the bar. He questioned Rowley's statements that Richardson had been dancing with other females and pushed Brittany because Rowley was not the doorman when he arrived at the bar. Richardson did not recall much of what happened after Brittany left the bar. When asked if he was dancing upstairs, Richardson believed there was some confusion about him dancing because Mackey had been upstairs dancing with a female. He showed a picture taken at the bar that night of Mackey dancing; however, Detective Hardy knew Mackey but could not identify the male in the picture as Mackey. Richardson also showed Detective Hardy a short video that was taken after the drink incident; he explained that the video was taken from the place where he had been the entire time that he was upstairs. Richardson said he stood next to the dance floor and the females in the video were the ones standing next to him dancing the entire night.

33. Richardson said his first contact with Rowley occurred when Rowley told him to leave the bar; Rowley said he had had enough and there was not going to be any dirty dancing. Richardson pulled out his wallet and looked through it to make sure that he had driver's license. Rowley told him that he would take his wallet from him. Richardson told Rowley he was not going to take his wallet. Rowley said he was a railroad marshal and could not believe Richardson would be this drunk in public. Marks then came over and told him they should leave the bar and Rowley told him to leave.

34. Richardson acknowledged that his badge would be displayed when he looked in his wallet to check for Brittany's identification and his driver's license and debit card. When asked why he was checking for his driver's license, Richardson advised he showed his driver's license at the door but did not take it out of his wallet. Richardson said he checked his wallet because he had lost his wallet and debit card in the past.

35. Richardson admitted to Detective Hardy that he told the employees he was a WPD officer but claimed he did not make the statement to throw his weight around or intimidate anyone. Richardson made the statement because he did not know who the three persons were, he was being accused of something that he did not recall doing, and he did not understand why he was being told to leave. Richardson did not know that they were employees of the bar because none of them were wearing uniforms. Richardson thought the person could be the boyfriend of the female who he bumped into. Richardson said he kept asking what he did wrong. Richardson saw the males escorting Brittany from the bar after she threw the water in his face but he did not know who made her leave. Richardson claimed he let Brittany leave with the unknown males because he had water in his face and could not see.

36. Detective Hardy asked again when Richardson told Rowley that he was a WPD officer. Richardson said Rowley told him that he was a railroad marshal and he needed to leave. When Rowley said he would take Richardson's badge, Richardson told Rowley he was not going to take his badge from him and identified himself as a police officer. Richardson also told Detective Hardy he was holding his wallet at that time but he did not show Rowley his WPD badge. Richardson said he did not know if his badge could be seen at that point.

37. Richardson took his wallet out and demonstrated to Detective Hardy how the wallet opened. When the both sides of the wallet were opened, Richardson's WPD badge was in the middle section and clearly visible. His driver's license was underneath a flap on the left section; his driver's license could not be viewed until he lifted the flap. Detective Hardy advised Richardson that Marks stated Richardson flashed his badge and said he was a police officer. Richardson asked what it meant to "flash" a badge; he did not know how they interpreted it. Richardson admitted that his wallet was in his hand when he said he was an officer but did not recall if he intentionally showed his badge. He could not recall if his wallet was open when he said he was an officer. Richardson also did not recall telling the employees they could not kick him out and saying he owned the city or he owned the bar. Later during the interview, Detective Hardy advised that Marks' statement was Richardson "showed" the badge to Rowley.

38. Detective Hardy asked Richardson why he stipulated to the facts in the diversion agreement stating he displayed his badge while saying he was an officer, he owned the town, he owned the bar, and they could not kick him out of the bar if he did not remember doing it. Richardson responded he told his attorney that those statements were "a lie" but his attorney in the criminal case told him it was the best offer that he could get and Richardson should sign it. However, Richardson later stated that he was not saying I know it did not happen but that he could not recall doing it. Even though the diversion agreement stated the facts were true, Richardson did not believe that it happened. Richardson signed the diversion agreement to protect his future but he could not state whether those facts were the truth or a lie. Richardson later explained he was charged with domestic violence battery, disorderly conduct, and DUI but the domestic violence charge was dismissed and he accepted the diversion on the remaining two charges. Richardson said when he signed the

diversion agreement, he was lacking certain reports that he had received for his interview with Detective Hardy. Specifically, he did not have one of the reports concerning an interview with the upstairs bartender who stated he did not see Richardson doing anything wrong. Richardson also told Detective Hardy that he had never previously been told to leave the bar and could not explain why he told Lieutenant Reynolds that he had.

39. Detective Hardy testified at the hearing about his interview with Richardson. Based upon the factual stipulation in the diversion agreement, Hardy assumed those facts had occurred. However, when he asked questions, Richardson's typical answer was he could not remember because he blacked out. Richardson said he could not defend himself because he drank too much and could not remember. Richardson stated he was sorry that he gave the WPD a black eye and made the bad decision to drink and drive.

40. At the hearing, Detective Hardy explained that prior to interviewing Richardson, a transcript of an officer's interview with the upstairs bartender had been sent to Richardson. Richardson had not seen that transcript while the criminal case was pending; however, Richardson had seen a copy of the officer's report about his interview with the upstairs bartender. Richardson told Detective Hardy the bartender stated he did not see Richardson do anything and the statements by the upstairs bartender exonerated him. Detective Hardy testified the upstairs bartender actually reported he did not see any shoving or flashing of a badge.

41. Detective Hardy also explained Richardson did not agree with the factual statements in the diversion agreement because he believed Rowley was not credible. One reason he believed Rowley lacked credibility was because he claimed he was at the door when Richardson arrived; Richardson said a Hispanic male was at the door, not Rowley who he believed to be a white male. Although he disputed the factual statements in the diversion agreement, Richardson could not say with 100% certainty that it did not occur because he could not recall everything. However, during the interview, Richardson said he did not think he was overly intoxicated.

42. Detective Hardy acknowledged Rowley's credibility was important and he analyzed Rowley's statements with the other witnesses. Based on the 911 call, he believed some things Rowley reported were accurate but nothing he reviewed exonerated Richardson.

43. On August 20, 2015, Dave Thompson, an investigator with the Commission, interviewed Richardson about the incident at the piano bar. Richardson told Thompson he did not shove Brittany. When asked about his stipulation in the diversion agreement, Richardson claimed when he signed the diversion agreement he did not have copies of four interviews that he subsequently received. Rowley believed those statements exonerated him on the disorderly conduct charge. Richardson said his attorney who represented him in the criminal case was persistent that he sign the diversion agreement even though Richardson disagreed with the factual statement for disorderly conduct. Richardson did not have complete recall of the events at the bar. Thompson relied on the stipulation in the diversion agreement and reviewed the following documents that Rowley relied upon:

Lieutenant Kenny's interview with Rowley and police interviews with the downstairs bartender, the upstairs bartender, and a bouncer. Thompson did not find anything in those documents exonerating Rowley of the disorderly conduct offense. Thompson also testified he did not believe Richardson was being intentionally deceptive during the interview.

44. At the hearing, Marks also gave his account of what happened at the upstairs bar. When Brittany and her relative came upstairs the first time, Brittany was upset and wanted them to come downstairs. Brittany's relative was calling Richardson racial slurs and saying her family did not like him. Brittany and her relative left. Marks later went downstairs to check on them; he then returned upstairs. While at the upstairs bar, Marks took a picture. The photograph showed a female with her arms around the male's neck and her legs around the male's waist. Although the faces are not discernable, Marks said the male was Officer Mackey dancing with a female.

45. Marks testified Brittany and her relative returned to the upstairs bar. Brittany was upset and intoxicated. Marks was dancing when his partner said something had happened. Marks returned to the group and saw moisture on Richardson's face. Brittany said she threw a drink on him. Rowley approached the group. Richardson was not worried about Brittany. Richardson told Rowley that Brittany was drunk and he was a police officer and was used to dealing with drunk people. Marks did not see any altercation between Richardson and Brittany.

46. As the employees were escorting Brittany from the bar, Marks went to check on Brittany's relative. When he returned, Marks and Richardson paid their bar tabs. When Richardson put his credit card back in his wallet, the bartender saw Richardson's badge and commented on it. However, Marks also testified later that a flap covered Richardson's badge when he puts his card in the wallet. Marks never saw Richardson flash his badge.

47. Marks and Richardson were about to leave when Rowley said he was a railroad marshal and he would drag Richardson out of the bar. Richardson asked why he was being kicked out and Rowley stated you guys have to go or he would drag them out of the bar. Richardson was intoxicated. Marks had his arm around Richardson and was carrying him downstairs. Marks never heard Richardson tell Rowley he was an officer and owned the place. Rowley was talking to 911 on the phone when he approached Marks and Richardson. Marks acknowledged that when he got in the car he became sick from drinking alcohol but claimed his recollection of what happened was clear.

48. However, Marks admitted when he was interviewed earlier by a detective, he was asked whether Richardson showed his WPD badge and said, "I own this town." Marks told the detective he did not know if Richardson said that. Marks said he had engaged in heavy drinking and things got blurry. Both he and Richardson were drunk. Marks also told the detective that what was being said about Richardson's behavior was not consistent with what he knew about him.

49. Richardson also testified at the hearing. Richardson entered the club with Brittany. He kept her identification card and money in his wallet. He opened his wallet

making sure the badge was covered. Richardson paid with a \$20 bill and he and Brittany showed their identification. Brittany's relative was already at the bar with one of her friends. Richardson had two drinks while he was downstairs. He went upstairs, got drinks from the bar, and stood by a pillar while Marks was dancing. Richardson did not recall dancing but was sure he did not dance with other women because Brittany was there.

50. Brittany came upstairs and was upset because he was not downstairs with her. Brittany returned to the upstairs with her relative who called Richardson a racial slur and said Brittany's family did not like him. Brittany wanted him to drink water and got him a glass. She then threw it in Richardson's face. Brittany and her relative were escorted out of the bar.

51. Richardson had no recollection of flashing his WPD badge and saying he owned the bar. Richardson's recollection of the incident was "in and out." He did not count the number of drinks he consumed but he had a high bar tab. Richardson could not remember driving.

52. After talking to his criminal defense attorney and union representative, Richardson understood the diversion agreement would not affect his certification as a law enforcement officer. Richardson wanted the language in the diversion agreement changed because he did not believe Rowley's report of the incident. His attorney in the criminal case explained his choice was to sign the agreement or go to trial. Richardson's attorney was concerned about him being convicted of driving under the influence if the criminal case were tried and Richardson did not believe he could testify truthfully on the facts as to what occurred that night.

53. Richardson explained he typically drinks wine at home with Brittany. On this night, he let his guard down and drank too much. As a result of his conduct, he could not perform his duties as a law enforcement officer for one year and received 17 days of unpaid leave.

54. At the hearing, Richardson introduced copies of posts that appeared on Rowley's Facebook account. The posts contained negative racial pictures and comments as well as a picture of the confederate flag. Rowley disputed any inference that he was racially biased. He stated his wife is biracial, other posts on his Facebook account that were not included supported Martin Luther King and Blue Lives Matter, and about half of his Facebook friends were black. Rowley was adamant that his response was not based on Richardson's race.

55. Richardson presented his performance reports while working as WPD police officer; he had received scores in several areas ranging from 3 to 4.5 on a scale of 0 to 5. For his evaluation at the end of 2015, he received scores of 1 and 2 for violating WPD policies related to this incident. He has also received several awards during his WPD career.

56. WPD Captain Brian White supervised Richardson. He reviewed the reports from the WPD professional standards and made recommendations for sanctions related to

this incident. The WPD imposed a 17-day suspension without pay against Richardson. After Richardson returned to work, Captain White had several conversations with him. Richardson was always respectful and acted appropriately. Captain White also talked with Richardson's other supervisors who advised everything was alright. Captain White had no evidence that Richardson would not be an effective law enforcement officer. However, he acknowledged that Richardson had approximately six years of experience as a law enforcement officer when this incident occurred and he did not have the opportunity to observe him at the bar that night.

Conclusions of Law

Conduct that Constitutes the Misdemeanor Crime of Disorderly Conduct

57. The Act authorizes the Commission to suspend, condition, or revoke the certification of a police officer or law enforcement officer who engages in conduct which, if charged as a crime, would constitute a misdemeanor crime that the Commission has determined in a regulation reflects on an officer's honesty, trustworthiness, integrity, or competence. K.S.A. 2016 Supp. 74-5616(b)(5). Under K.A.R. 106-2-2a(50), one such misdemeanor crime is disorderly conduct.

58. The misdemeanor crime of disorderly conduct is defined as:

"[O]ne or more of the following acts that the person knows or should know will alarm, anger or disturb others or provoke an assault or other breach of the peace:

- (1) Brawling or fighting;
- (2) disturbing an assembly, meeting or procession, not unlawful in its character; or
- (3) using fighting words or engaging in noisy conduct tending reasonably to arouse alarm, anger or resentment in others." K.S.A. 2016 Supp. 21-6203(a).

59. In the criminal case, Richardson stipulated to facts in the diversion agreement that he acted inappropriately, was told to leave the bar, flashed his WPD badge, used profanity, refused to leave the bar while claiming he could not be made to leave the bar because he was a police officer, and continued to flash his badge and question the reason for kicking him out of the bar. He also agreed that he was guilty of disorderly conduct.

60. Richardson asserts he would not have agreed to the statements in the diversion agreement if he had received the additional documents produced for Detective Hardy's interview. However, Richardson never provided copies of the interviews with the bartenders or bouncer that he relies upon. Additionally, Detective Hardy and Investigator Thompson with the Commission testified they had reviewed those documents and found nothing that exonerated Richardson concerning the disorderly conduct offense. Richardson's claims also lack merit based upon the statements he gave to Detective Hardy.

61. Richardson admitted to Detective Hardy that he identified himself as a WPD officer while holding his wallet and checking for his driver's license but claimed he did not show his badge to Rowley. During that interview, Richardson took his wallet out and demonstrated how his wallet opened and where his driver's license was kept. When he opened his wallet to show his driver's license, Richardson's WPD badge was clearly visible in the middle section of his wallet; a flap covered his driver's license, but not his WPD badge. It is difficult to understand Richardson's claim that he did not want anyone to know he was a police officer if his badge was clearly visible when he retrieved or showed his driver's license for identification. Rowley has consistently stated that Richardson flashed his badge while using profanity and stating he owned the town, he owned the bar, and Rowley could not make him leave the bar. Rowley told Richardson to stop flashing his badge and described Richardson's wallet and badge to Officer Pham on the night of the incident. Additionally, Detective Hardy told Richardson that Marks stated Richardson showed his badge to Rowley, which is consistent with Rowley's statements. This evidence shows while not on official duty, Richardson intentionally showed his WPD badge to Rowley as an attempt to thwart him from making Richardson leave the bar, in other words, Richardson flashed his WPD badge.

62. Richardson also claims Rowley lacks credibility because there are inconsistencies in Rowley's police interviews. There are some inconsistencies in Rowley's statements, such as whether Rowley was standing on the patio or going upstairs when he saw Richardson dancing and whether Richardson pushed Brittany once or twice and whether Richardson pushed Brittany's relative. However, these inconsistencies are not critical to the offense of disorderly conduct under K.S.A. 2016 Supp. 21-6203(a)(3).

63. While there are inconsistencies in some of his statements, all of Rowley's statements contain consistent material facts about Richardson's disorderly conduct—dancing inappropriately, yelling profanities, arguing with Brittany and her relative, refusing to leave, flashing his badge, and saying he was a police officer and owned the bar and town. Most of those assertions were initially made when Rowley talked to the 911 dispatcher as Rowley and Richardson were in or leaving the bar.

64. We also note that some of Richardson's statements are inconsistent. For example, during the interview with Lieutenant Reynolds, Richardson said he "was pissed" when Brittany threw the water in his face. By contrast, during the interview with Detective Hardy, Richardson said he laughed it off when the water was thrown in his face. Lieutenant Reynolds asked him if he was dancing, and Richardson said it was not relevant, indicating he knew whether he had been dancing. When he talked with Detective Hardy, Richardson said he did not recall dancing with anyone at the bar. Richardson's claim that he did not dance with the females is questionable considering the statements he made while showing the video to Detective Hardy—he stood next to the dance floor and the females standing next to him in the video were the ones dancing the entire night. From this statement, it is reasonable to believe that Richardson was dancing with them due to their close proximity to him and the dance floor. Moreover, Richardson claimed he experienced a black out at critical times due to his intoxication but yet he also claimed he was not overly intoxicated. A

reasonable person, however, would believe someone is overly intoxicated if it results in a black out. His intoxication makes it difficult to place much credence on his claim of events that happened at the bar.

65. Richardson suggests the accusations against him are the result of misidentification. Richardson claims the picture he produced showed Mackey in the upstairs bar dancing with a female in the manner described by Rowley. However, Detective Hardy who knew Mackey could not identify the male in the picture as Mackey when Richardson showed it to him during their interview. Additionally, Rowley described Richardson's dancing as pulling out the top of a female's blouse, stumbling into a female and grabbing her, and grinding. In the picture, the female had wrapped her arms and legs around the male, i.e., indicating a consensual act by her. Moreover, on the night of the incident, Rowley identified Richardson as the officer who refused to leave and flashed his badge. After having observed Richardson and heard the physical description of Mackey, Richardson's claim of misidentification is not credible and lacks merit.

66. Richardson also claims the posts on Rowley's Facebook account show he is racially biased. While the Commission does not condone the posts on Rowley's Facebook account, they are not sufficient to show that Rowley's actions at the bar were racially motivated. Rowley testified his wife is biracial. In his interviews and at the hearing, Rowley described other minorities who were at the upstairs bar, but he did not take action against them. Rowley did not complain about Marks, who was black and also dancing upstairs. Rather, Rowley's concern with Richardson was motivated by Richardson dancing inappropriately, arguing with Brittany and her relative, using profanity, and refusing to leave the bar. Rowley's concern was exacerbated when Richardson continued his refusal to leave and showed his badge while stating he was a police officer and owned the bar and town.

67. After having reviewed Rowley's statements and observing him at the hearing, the Commission finds that Rowley is credible, he did not misidentify Richardson as the officer causing the disturbance, and he was not motivated by racial bias.

68. In his criminal case, Richardson agreed to the facts in the diversion agreement that constitute the crime of disorderly conduct. The evidence shows Richardson accepted the diversion agreement because he avoided a trial and possible conviction of the charges, thereby reducing the risks for continuing his career as a law enforcement officer. Having avoided a conviction on the domestic violence battery and DUI offenses, Richardson wants now to disavow in this administrative case the factual stipulation in the criminal case for the disorderly conduct. Richardson's challenge to the factual stipulation in the criminal case lacks credibility after considering his inconsistent statements and intoxication on the night of the incident and the statements that he made to Detective Hardy.

69. When the totality of the evidence is considered, clear and convincing evidence shows Richardson was intoxicated in a public place yelling profanities, arguing with Brittany and her relative, refusing to leave the bar, flashing his badge, and saying he owned the bar and town and could do whatever he wanted because he was a police officer. His conduct

constitutes the misdemeanor crime of disorderly conduct as defined in K.S.A. 2016 Supp. 21-6203(a)(3).

70. Based upon the evidence and the above analysis, the Commission concludes that Richardson engaged in conduct that, if charged, constituted the misdemeanor crime of disorderly conduct which is a misdemeanor crime reflecting on an officer's honesty, trustworthiness, integrity, or competence thereby violating K.S.A. 2016 Supp. 74-5616(b)(5) and K.A.R. 106-2-2a(50).

Unprofessional Conduct – Intentional false or deceptive statement in an official document or communication

71. The Act authorizes the Commission to suspend, condition, or revoke the certification of a police officer or law enforcement officer who engages in unprofessional conduct as defined by the Commission in a regulation. K.S.A. 2016 Supp. 74-5616(b)(7). Under K.A.R. 106-2-3(j)(1), the definition of unprofessional conduct includes intentionally using a false or deceptive statement in any official document or official communication.

72. The false statements concern Richardson's denial that he flashed his WPD badge at the bar. The evidence indicates there were two instances where Richardson flashed his badge at the bar—when entering the bar at the door and when being told to leave at the upstairs bar. The Amended Summary Proceeding Order had only one factual statement about Richardson flashing his badge. It stated Richardson flashed his badge when Rowley told him to leave. That instance occurred while they were upstairs. The Amended Summary Proceeding Order made no reference to Richardson showing his badge at the door. Thus, the Amended Summary Proceeding Order was based on the instance when Rowley told Richardson to leave while they were upstairs.

73. The Amended Summary Proceeding Order concluded that Richardson made the following three intentional false or deceptive statements in an official communication:

(A) Richardson's statement to Lieutenant Reynolds during the criminal investigation interview that he did not flash his badge at the bar;

(B) Richardson's statement to Detective Hardy during the professional standards interview that he did not intentionally display his badge to Rowley and his badge would have been covered; and

(C) Richardson's statement to Investigator Thompson during the Commission's investigation interview that he did not agree with the stipulated facts in the diversion agreement, he did not make the statements in the stipulated facts in the diversion agreement, and he was not the officer flashing his badge.

74. Our analysis begins with Richardson's statement to Lieutenant Reynolds. When Lieutenant Reynolds asked if he remembered the conversation about being told to leave the bar, Richardson did not want to answer. When Lieutenant Reynolds asked

Richardson if he told Rowley he was a police officer and owned the town and Rowley could not make him leave, Richardson's response was it did not happen. Lieutenant Reynolds also asked Richardson if he showed his badge at the door and said "Is this good enough?" Richardson responded it was a lie because his badge was covered. Richardson claimed he did not want people to know he was a police officer. The only statement Richardson made to Lieutenant Reynolds denying he showed his badge concerned the incident at the door. As discussed above, the statements that Richardson made while he was at the door are not at issue in this proceeding. Thus, the Commission determines that the conclusion in the Amended Summary Proceeding Order that Richardson made a false statement to Lieutenant Reynolds about flashing his badge while they were upstairs was not proven and must be reversed.

75. The second false statement referenced in the Amended Summary Proceeding Order concerned Richardson's statement to Detective Hardy. During this interview, Richardson admitted he was told to leave the bar. Richardson told Detective Hardy, when told to leave the bar, he pulled out his wallet and looked through it to check for his driver's license. Richardson said Rowley may have seen his badge at that time. Richardson also denied showing his badge to Rowley but did not know if it could be seen.

76. About one month before the interview with Detective Hardy, Richardson signed the diversion agreement. In the diversion agreement, Richardson admitted to the following facts:

Mr. Richardson refused to leave and pulled out his Wichita Police department badge and told Mr. Rowley 'I'm Wichita PD. Fuck you all, I own this town. You can't tell me what to do, I own this city.' Mr. Richardson employee about the reason for kicking him out.

Richardson told Detective Hardy these facts were a lie and based upon those given by Rowley, who Richardson claims is not credible as discussed above.

77. The statement that Richardson later gave to Detective Hardy is inconsistent with the factual statement in the diversion agreement. Inconsistent statements are relevant so that the factfinder has all facts in determining the value and weight to be given to the testimony. It is possible that when the credibility of a witness is shaken, a different result may be reached. Inconsistent statements are admissible for the purpose of impeachment. *Leinbach v. Pickwick Greyhound Lines*, 135 Kan. 40, 49-50 (1932). Thus, when Richardson stated to Detective Hardy that he did not flash his badge, Richardson's statement to the contrary in the diversion agreement was relevant as to his credibility, but it does not necessarily prove that Richardson's statement to Detective Hardy was an intentional false statement.

78. Based upon the totality of the evidence, the Commission concludes that the evidence was insufficient to show that when Richardson told Detective Hardy that he did not flash his badge and his badge was covered, Richardson committed unprofessional conduct by using a false or deceptive statement in any official document or official communication

without a legitimate law enforcement purpose. Thus, the Commission determines that the conclusion in the Amended Summary Proceeding Order that Richardson made an intentional false statement to Detective Hardy must be reversed.

79. The last false statement referenced in the Amended Summary Proceeding Order concerned Richardson's statement to Investigator Thompson. During this interview, Richardson attempted to explain why he signed the diversion agreement with the factual stipulation that he now wants to disavow. Again, Richardson's statements to Investigator Thompson were inconsistent statements. More important, Investigator Thompson testified at the hearing that he did not believe Richardson was being intentionally deceptive during the interview. No evidence discredits Thompson's belief. Thus, the Commission determines that the conclusion in the Amended Summary Proceeding Order that Richardson made an intentional false statement to Investigator Thompson about flashing his badge while they were upstairs was not proven and must be reversed.

Good Moral Character

80. The Act authorizes the Commission to suspend, condition, or revoke the certification of a police officer or law enforcement officer who fails to meet and maintain the certification requirements of K.S.A. 74-5605 and amendments thereto. K.S.A. 2016 Supp. 74-5616(b)(1). One such requirement is that a police officer or law enforcement officer must be of good moral character sufficient to warrant the public trust. K.S.A. 2016 Supp. 74-5605(b)(5).

81. K.A.R. 16-2-4 defines the term "good moral character" for purposes of K.S.A. 2016 Supp. 74-5605 to include the following personal traits or qualities:

- (1) Integrity;
- (2) honesty;
- (3) upholding the laws of the state and nation;
- (4) conduct that warrants the public trust; and
- (5) upholding the oath required for certification as specified in K.A.R. 106-3-6.

The required oath for certification as a law enforcement officer is:

On my honor, I will never betray my badge, my integrity, my character, or the public trust. I will always have the courage to hold myself and others accountable for our actions. I will always uphold the constitution of the United States and of the state of Kansas, my community, and the agency I serve. K.A.R. 106-3-6.

82. Any single incident or event is sufficient to show that an officer has failed to maintain good moral character sufficient to warrant the public trust. K.A.R. 106-2-4(b).

83. Because they are vital members of the judicial system, law enforcement officers must adhere to a higher standard of conduct than what is expected of private citizens. For persons who uphold the law, this higher standard is not reflected in taking the path of least resistance, but by doing the unpleasant thing if it is right and not doing the pleasant thing if it is wrong. *Application of Walker*, 112 Ariz. 134, 138 (1975).

84. The practice of law enforcement is reliant upon the trait of good moral character sufficient to warrant the public trust. The trust that the public places in law enforcement officers is based upon the expectation that an officer is honest, candid, fair, and respectful of the laws and individuals. Any officer failing to adhere to these standards has compromised their integrity.

85. The Commission hereby incorporates by reference paragraph numbers 57 through 70 above. Those findings and conclusions show Richardson's conduct clearly demonstrates a lack of good moral character in the following respects:

A. Richardson engaged in conduct that constituted the misdemeanor crime of disorderly conduct. The Commission has determined that disorderly conduct is a crime reflecting on an officer's honesty, trustworthiness, integrity, or competence. The traits of honesty and integrity are also included in the definition of good moral character sufficient to warrant the public trust. Richardson's disorderly conduct shows he no longer maintains those traits.

B. Richardson's conduct while upstairs at the bar constitutes the crime of disorderly conduct. Thus, Richardson did not uphold the laws of this state, which is one of the traits included in the definition of good moral conduct sufficient to warrant the public trust.

C. Richardson refused to leave the bar when asked to do so and questioned the reason for asking him to leave even though Richardson has cited no support to show that a reason was necessary for this request. Richardson's claim to Detective Hardy that he did not know Rowley and the other bouncers were bar employees is disingenuous. He had just seen the same persons escorting Brittany out of the bar. Richardson's refusals to leave and demands for a reason to ask him to leave show a lack of respect for Rowley's authority to determine who could be in the bar and to keep the bar, its employees, and patrons safe.

D. During his interviews and at the hearing, Richardson continued to deny his behavior at the bar, other than being intoxicated. Richardson denied flashing his badge and claimed Rowley misidentified him as the officer who was dancing, Rowley was not credible, Rowley's actions were racially motivated. These claims were discussed above and rejected. The totality of the evidence showed Richardson was intoxicated, had been dancing, using profanities, engaging in a verbal altercation with Brittany and her relative, refusing to leave the bar, showing his badge, and stating he was a police and owned the town and bar. Richardson admitted to Detective Hardy that he said he was an officer and took out his wallet to look for his driver's license and debit card. If he were looking for those items, there was no reason for Richardson to tell Rowley that he was an officer. Considering his intoxication and earlier behavior, it is unlikely that Richardson opened his wallet for an innocent purpose

when told to leave the bar. Based upon his claims, Richardson has not taken accountability for all of his actions on the night of the incident. Accountability is a part of the oath required for certification, which is included in the definition of good moral character sufficient to warrant the public trust.

E. Although the claims of false statements were not proven, Richardson was not candid in his interviews with Lieutenant Reynolds and Detective Hardy. He challenged Lieutenant Reynolds on what questions were relevant and asked Detective Hardy what was meant by "flashing" his badge rather than answer the question about flashing his badge when asked to leave. Richardson clearly knew what the term meant because he has always maintained that he never flashed his badge when entering the bar, i.e., showed or displayed his badge for a personal reason. This shows Richardson lacks candor, which is critical to several traits defining good moral character—honesty, integrity, character, and courage.

F. Richardson was intoxicated in a public place, bumping and grabbing females on the dance floor, yelling at Brittany and her relative, using profanity, refusing to leave the bar, and flashing his badge while saying he owned the town and bar and could not be told what to do. Such conduct erodes the public trust in law enforcement officers; this is also a factor in the definition of good moral character.

G. Richardson told Detective Hardy the factual statements in the diversion agreement were a lie and he later stated he did not know if those statements were the truth or a lie, but he stipulated to the facts in the diversion agreement to protect his law enforcement career. Richardson's statements indicate that he either has no regard for the truth or he places his career above the truth. In other words, Richardson took the path of least resistance for him at that time.

86. Based upon the totality of the evidence and the above analysis, the Commission concludes that Richardson has failed to maintain the requirements for certification as a law enforcement officer, specifically the requirement in K.S.A. 2016 Supp. 74-5605(b)(5) of "good moral character sufficient to warrant the public trust," thereby violating K.S.A. 2016 Supp. 74-5616(b)(1).

Sanction

87. As discussed above, the Commission has concluded that Richardson did not engage in unprofessional conduct by intentionally using a false or deceptive statement in any official document or official communication as set forth in K.S.A. 2016 Supp. 74-5616(b)(7) and K.A.R. 106-2-3(j)(1). The Commission has further concluded that Richardson did violate the following two provisions of the Act:

- (A) engaging in conduct that, if charged, would constitute the misdemeanor crime of disorderly conduct that reflects on an officer's honesty, trustworthiness, integrity, or competence, K.S.A. 2016 Supp. 74-5616(b)(5) and K.A.R. 106-2-2a(50), and

(B) failing to maintain good moral character as required for certification. K.S.A. 2016 Supp.75-5605(b)(5) and K.S.A. 2016 Supp. 74-5616(b)(1).

88. Richardson provided evidence of an accommodation, awards and performance reviews he received during his career as well as testimony from his superior about his ability to perform his duties. Richardson points out that the WPD did not terminate his employment but imposed a less serious sanction and contends any sanction other than revocation of his law enforcement certification is appropriate.

89. However, there was no showing that the WPD's policy violations were the same as those in the Commission's Amended Summary Proceeding Order. Thus, the WPD's employment decision finding Richardson violated its policy is not applicable to determining whether Richardson violated the Kansas Law Enforcement Training Act for certification.

90. While it is commendable that Richardson has a favorable past employment record, it does not justify or support his violation of the above provisions in the Act. Rather, it shows that on May 17, 2014, Richardson failed to apply the judgment, knowledge, and experience he had gained as a law enforcement officer in the prior six years. Neither can Richardson's conduct at the bar be excused by his excessive consumption of alcohol that night.

91. Additionally, during the interviews Richardson failed to be candid and forthright with Detective Hardy and Investigator Thompson. He claimed his alcohol consumption caused his black out and therefore left him without memory to defend himself. Richardson testified he relied on the statements of others that he did not flash badge. However, no evidence was presented that those persons observed him without interruption. For instance, Marks admitted that he returned to the downstairs to check on Brittany after the first time she came upstairs, he danced while upstairs, did not see an altercation between Brittany and Richardson when she returned upstairs, and he left the upstairs to check on Brittany's relative when she left the bar.

92. During the interviews with Detective Hardy and Investigator Thompson and at the hearing, Richardson failed to accept the possibility that his excessive alcohol consumption caused him to act inappropriately, argue with Brittany, use profanities, refuse to leave the bar, flash his badge, and state no one could make him leave because he was a WPD officer. This failure is as much of a concern as is his conduct at the bar. Although he expressed remorse for the embarrassment he caused to the WPD, Richardson fails to take any responsibility for his conduct at the bar. The Commission concludes that Richardson does not fully comprehend or accept the seriousness of his misconduct and how it erodes the public trust in law enforcement officers; rather, he continues to deny his role in the events that occurred at the bar. In other words, Richardson has not lived up to his oath as a certified law enforcement officer: "I will always have the courage to hold myself and others accountable for our actions." K.A.R. 106-3-6.

93. Based upon the above violations, separately and collectively, the Commission further determines that Richardson's certification as a law enforcement officer should be revoked.

Order

WHEREFORE, after consideration of the above findings of facts and conclusions of law, it is the decision and order of the Commission that the certification as a law enforcement officer issued to Zachary Richardson be revoked. It is the further decision and order of the Commission that Zachary Richardson must surrender and return to the Commission all evidence of his certification as a law enforcement officer within thirty (30) days from the date entered on the certificate of service below.

IT IS SO ORDERED.


Richard Powell
Commissioner and Chair of Hearing Panel
As designated by and on behalf of the
Kansas Commission on Peace Officers'
Standards and Training

NOTICE OF ADMINISTRATIVE RELIEF

The above Order revoking the certification as a law enforcement officer issued to Zachary Richardson is a final order. Pursuant to K.S.A. 2016 Supp. 77-529, a party may file with the Commission a petition for reconsideration within 15 days from the date noted below in the Certificate of Service. Such petition must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

Pursuant to K.S.A. 2016 Supp. 77-528, a party may file, if applicable, a petition for stay of effectiveness of the order prior to the expiration of the time in which to file a petition for judicial review. The filing of a petition for a stay of effectiveness is not a prerequisite for seeking judicial review.

NOTICE OF JUDICIAL RELIEF

If a petition for reconsideration is not filed, a party may file within 30 days from the date noted below in the Certificate of Service a petition for judicial review with the appropriate district court as provided in the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.*

The person who may receive service of a petition for reconsideration, a petition for stay of effectiveness, or a petition for judicial review on behalf of the Commission is: Gary E. Steed, Executive Director of KS-CPOST, 1999 N. Amidon, Suite 350, Wichita, KS 67203.

CERTIFICATE OF SERVICE

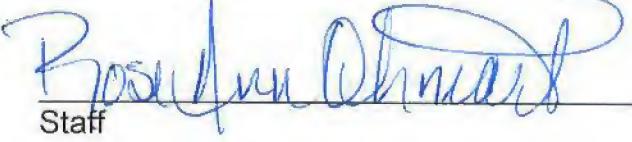
This is to certify that on this 11th day of January 2017, copies of the above Order, Notice of Administrative Relief, and Notice of Judicial Relief were personally delivered to:

Mr. Eric Williams
Special Assistant Attorney General
KS-CPOST
1999 N. Amidon, Suite 350
Wichita, KS 67203

and deposited in the United States mail, first-class postage prepaid, and addressed to:

Donald Aubry
10975 Benson, Suite 370
Overland Park, KS 66210

Zachary Richardson

Staff
Kansas Commission on Peace Officers'
Standards and Training